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EXTRAORDINARY

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PART II—Section 2

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है कि जिसे यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on 20th December, 1991:—

BILL No. 210 OF 1991

A Bill further to amend the Indian Penal Code and the Code of Criminal Procedure, 1973.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Criminal Laws (Amendment) Act, 1991.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After section 300 of the Indian Penal Code, the following section shall be inserted, namely:—

“300A. A custodial death shall amount to murder unless such death is found to be natural by the judicial enquiry conducted under Chapter XIII of the Code of Criminal Procedure, 1973.

Explanation.—For the purposes of this section “custodial death” means death of a detainee or any other person under the custody of Police, either by judicial order or otherwise, during or in the course of such custody.”

Short
title,
extent
and
com-
mence-
ment.

Insertion
of new
section
300A.

Custodial
death to
amount
to mur-
der.

Insertion
of new
Chapter
XIIA in
Act No. 2
of 1974.

3. After Chapter XII of the Code of Criminal Procedure, 1973, the following Chapter shall be inserted, namely:—

“CHAPTER XIIA

SPECIAL PROCEDURE TO BE FOLLOWED IN CASE OF CUSTODIAL DEATH

Postmor-
tem of
person
who
dies
in cus-
tody.

176A. (1) A postmortem shall be performed within twenty four hours of the death of the person under police custody by the Medical Officer of the concerned jurisdiction.

(2) The postmortem shall be conducted in the presence of a private medical practitioner of the choice of the legal heir of the deceased or any public worker of the area.

Enquiry
by Ses-
sions
Judge.

176B. A judicial enquiry in respect of the reasons or causes of the custodial death of a person shall be conducted by a judicial officer not lower than the rank of a Sessions Judge of the concerned judicial jurisdiction.

Findings
to be
published
in the
Gazette.

176C. Sessions Judge shall conclude his enquiry within a period of two months and his findings shall be published in the Gazette of India.

Proceed-
ings
against
officials.

176D. Criminal proceedings shall be initiated against those police officials who are held responsible by the judicial enquiry for causing custodial death.

Govern-
ment to
pay com-
pensation.

176E. If any police official is held responsible for causing custodial death, the Government shall pay compensation to the legal heirs of deceased according to the status of the victim within a period of two months of the publication of the judicial enquiry report in the Gazette of India.

Explanation.—For the purposes of this section, “Government” shall have the same meaning as is assigned to it in section 17 of the Indian Penal Code.

Appeal.

176F. (1) An appeal shall lie to the High Court from the report of the judicial enquiry or any of the orders passed by the judicial Officer in the course of his enquiry and from an order from the Government regarding the quantum of compensation payable to any of the legal heirs of the deceased.

(2) The appeal to the High Court under sub-section (1) shall be preferred within one month from the date on which the report of judicial enquiry is published in the Gazette of India or any orders passed during the course of such enquiry or the award of compensation is communicated to the legal heirs of the deceased:

Provided that the High Court in its discretion allow further time not exceeding fifteen days for the filing of such appeals, if it is satisfied that the appellant had sufficient reasons for not preferring appeal within the time prescribed.”.

STATEMENT OF OBJECTS AND REASONS

The object of this amending Bill is to prevent custodial deaths of persons caused by the carelessness, negligence and highhandedness of the Police Officials in the welfare State and to compensate the legal heirs of the victims to the extent possible.

NEW DELHI:

November 6, 1991

GEORGE FERNANDES

FINANCIAL MEMORANDUM

New section 176C sought to be inserted *vide* clause 3 of the Bill provides that the findings of the Sessions Judge as regard any custodial death shall be published in the Gazette of India. New section 176E provides for the payment of compensation to the legal heirs of the deceased according to the status of the victim. As regards persons dying in the custody of police officials in Union territories, Central Government shall have to bear the expenses incurred on payment of compensation. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees twenty lakhs per annum.

No non-recurring expenditure is likely to be involved.

BILL NO. 201 OF 1991

A Bill to provide for payment of pension and provision of other facilities to widows.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Widows' Welfare Act, 1991.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

(a) "pension" means the amount which may be sanctioned in favour of a widow for her maintenance under this Act or any other law for the time being in force; and

(b) "widow" means a female citizen of India who has attained the age of eighteen years and whose husband has died after her marriage.

Short
title,
extent
and com-
mence-
ment.

Defini-
tions.

Establishment of Central Board for Widows' Welfare.

3. (1) There shall be established by the Central Government a Board to be known as the "Central Board for Widows' Welfare", hereinafter called the "Central Board".

(2) The Central Board shall consist of the following persons, namely:—

(a) the Secretary, Ministry of Human Resource Development, Government of India, who shall act as its Chairman;

(b) one representative from each of the State and Union territory Boards established under section 4;

(c) one member from each of the State and Union territory Governments;

(d) two members from amongst persons who are engaged in active social work.

Establishment of State and Union territory Boards for Widows' Welfare.

4. (1) There shall be established by every State Government and Union territory administration a Board to be known as the "State Board for Widows' Welfare" or the "Union territory Board for Widows' Welfare", as the case may be, hereinafter called the "State Board" or the "Union territory Board", to aid and advise the Central Board in implementing the provisions of this Act.

(2) The State Board or Union territory Board shall consist of a Chairman and such number of members, as may be determined by the respective State Government or the Union territory administration, as the case may be.

Functions of State and Union Territory Boards.

5. Every State Board and Union territory Board shall formulate plans for helping the widows registered under sub-section (1) of section 8.

Pension and other facilities to Widows.

6. Every State Government or Union territory administration, as the case may be, in their respective jurisdiction, shall provide the following to every widow who is registered under sub-section (1) of section 8,—

(a) an amount not exceeding rupees seven hundred per month, in case the widow is having two or more living dependant children or rupees three hundred per month in case the widow has no living dependant child, as pension;

(b) residential accommodation free of cost;

(c) free education to dependant children upto high school levels; and

(d) employment to the widow or her dependant children by providing reservation in public employment;

Provided that if a widow gets re-married, all the facilities provided to her and her children under this Act shall be withdrawn.

Establishment of District Committees.

7. (1) There shall be established in every district by the respective State or Union territory Board, a Committee to be known as the "District Committee for Widows' Welfare", hereinafter called the "Committee".

(2) The Committee shall consist of a Chairman and such number of other members, as may be determined by the State or Union territory Board, as the case may be.

(3) The District Committees shall work under the control of the respective State or Union territory Board.

(8) (1) It shall be the duty of every Committee to register all widows having no independent and adequate means of livelihood irrespective of their caste, creed or colour.

Functions of the District Committees.

(2) The Committee shall give wide publicity through radio network, newspapers or other media for registering the widows.

(3) The Committee shall forward the list of the registered widows to the State Board or the Union territory Board, as the case may be.

(9) (1) There shall be constituted by the Central Government a Fund to be known as the "Widows' Welfare Fund", hereinafter called the "Fund" to carry out the purposes of this Act.

Constitution of Widows' Welfare Fund.

(2) The Fund shall consist of the sums paid into it by the Central Government and grants or donations received from other agencies.

10. The expenses incurred on providing the widows with pension and other facilities under section 6 shall be met out of the Fund.

Expenses to be met out of the Fund.

11. Every State and Union territory Board shall work under the guidance and control of the Central Board.

State and Union territory Boards to work under Central Board.

12. This Act shall not affect the provisions of any other pension law for the time being in force but any widow deriving benefit under this Act shall not be entitled to get benefit under any other pension law.

Saving provision.

13. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

There is a large number of widows in the country who have no means to support themselves and their dependant children. They are ill-treated by the people at large. Welfare of widows and their dependant children should be the concern of the Government. The Bill seeks to provide for the payment of pension and provision of other facilities to widows who have no other source of income.

NEW DELHI;
July 14, 1991.

BASAVA RAJESWARI

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for the establishment of Central Board for Widows' Welfare. Clause 4 provides for the establishment of State Boards and Union territory Boards for Widows' Welfare. Clause 6 provides for the payment of pension, free residential accommodation to the widows and free education to the dependant children of widows upto high school level. Clause 7 provides for the establishment of committees for widows' welfare in every district of the country. Clause 8 provides that every District Committee shall give wide publicity through radio net-work, newspapers and other media for registering the widows. Clause 9 provides for the constitution of Widows' Welfare Fund by the Central Government. As far as expenditure on State Boards is concerned, it will be met from the Consolidated Fund of the respective States. But, expenditure to be incurred on Union territory Boards shall be met from the Consolidated Fund of India. The Bill, therefore, if enacted, is likely to involve an estimated annual recurring expenditure of about rupees one hundred crores from the Consolidated Fund of India.

A non-recurring expenditure of about rupees fifty crores is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 13 of the Bill empowers the Central Government to make **rules for carrying out the purposes of the Bill. As the rules will relate to matters of details only, the delegation of legislative power is of a normal character.**

BILL NO. 197 OF 1991

A Bill to provide free medical and technical education to all students and for matters connected therewith.

Be it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

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|--|---|
| <p>1. (1) This Act may be called the Providing of Free Medical and Technical Education Act, 1991.</p> <p>(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.</p> <p>2. In this Act, unless the context otherwise requires, "appropriate Government" means the Central Government in respect of Union territories and State Government in respect of a State.</p> <p>3. Every student, irrespective of his caste, colour or creed, shall be provided free medical and technical education by the appropriate Government.</p> | <p>Short title and commencement.</p> <p>Definition.</p> <p>Providing of free medical and technical education.</p> |
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Students
to be
admitted
on merit.

4. All students eligible for enrolment in a college or an institution where medical or technical education is provided shall be admitted only on the basis of their performance in the examination required to be taken for being eligible for admission to the college or institution or on the basis of their performance in the last examination passed by them:

Provided that no other authority except the appropriate Government shall select the candidates for admission to colleges or institutions where medical or technical education is provided.

Prohibi-
tion on
charging
capitation
fee.

6. No college or institution, where medical or technical education is provided, shall charge any capitation fee for enrolling the students.

STATEMENT OF OBJECTS AND REASONS

The problem of getting admission in technical and medical institutions in the country has been agitating the minds of the youth. No proper selection is being made. All deserving candidates are not allowed to pursue the medical and technical education. The present procedure has created many problems and all those who have wealth can provide medical and technical education to their children and those who are well qualified are being deprived of such education. As a result, inefficient medical and technical trained people are coming out of these institutions. Therefore, it is necessary to provide free medical and technical education to all those who deserve them. Since admission for enrolment to these courses is based on the examination conducted by the appropriate Government, the benefit will go to deserving students and it will also produce efficient medical and technical persons.

Hence this Bill.

NEW DELHI;
November 14, 1991.

BASAVA RAJESWARI

FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for free medical and technical education by the Government to all students. The Central Government has to incur expenditure in respect of students in colleges and institutions situated in Union territories. The Central Government has also to provide financial assistance to State Governments in this regard. The Bill, therefore, would involve expenditure from the Consolidated Fund of India. An annual recurring expenditure of about rupees ten crores is likely to be involved from the Consolidated Fund of India.

A non-recurring expenditure of about rupees one crore is also likely to be involved.

BILL No. 207 OF 1991

A Bill further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. (1) This Act may be called the Representation of the People (Amendment) Act, 1991.

Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

43 of 1951.

2. In section 29A of the Representation of the People Act, 1951 (hereinafter referred to as the principal Act), in sub-section (7), after the existing proviso, the following proviso shall be inserted, namely:—

Amend-
ment of
section
29A.

“Provided that no association or body with a religious, communal or sectoral nomenclature or with a title having religious, communal or sectoral appeal shall be registered as a political party under this sub-section.”

3. After section 29A of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
29B.

“29B. If a political party exploits religious, communal or sectoral sentiments or indulges in promotion of or attempts to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language, during its election campaign or through its election manifesto or otherwise through means of publicity, its registration shall be cancelled by the Election Commission.

Cancell-
ation of
registra-
tion of
political
parties.

Explanation.—For the purposes of this section, “exploitation of religious, communal or sectoral sentiments” means seeking electoral support in the name of God, by whatever name described, or to seek electoral support by inciting religious, communal or sectoral sentiments through publicity in press or public platform, or enacting dramas or performing rites and ceremonies or organising and carrying out *rath yatras* (chariot processions) with images of God, political flags and symbols.”.

Amend-
ment of
section
123.

4. In section 123 of the principal Act, for sub-section (3A), the following sub-section shall be substituted, namely:—

“(3A) The propagation or inciting of, or attempt to propagate or incite, feelings of enmity or hatred between different classes of the citizens of India on the ground of religion, race, caste, community, region or language during election campaign by a candidate or his agent or any other person with the consent of a candidate or his election agent for furtherance of the prospects of election of that candidate or for prejudicially affecting the election of any candidate.”.

STATEMENT OF OBJECTS AND REASONS

Growing tendencies to play with religious sentiments and to evoke communal and sectoral loyalties of the electorate and other divisive sentiments and emotions with the obvious object of seeking political mileage and electoral gains, are witnessed on the eve of and during elections to the Lok Sabha and the Legislative Assemblies in different States. A situation has arisen where narrow religious, communal and sectoral considerations take the place of national considerations of socio-economic policies and programmes of development normally expected to be pursued by different political parties. The exploitation of sentiments and emotions for narrow sectoral affinities tend to blur the enlightened public opinion and judgement of the people while deciding the destiny of the nation by way of elections. Certain political parties seek to obtain political mileage and electoral gains by adopting religious, communal or sectoral nomenclatures while christening their parties. The narrow tendencies present a grave threat to the very unity and integrity of the nation and militate against the principles of Secularism and Socialist Democracy which the Constitution of India seeks to establish.

The existing provisions in section 123(3A) of the Representation of the People Act, 1951 are highly inadequate to prevent the craze for seeking and capturing easy vote banks by arousing narrow loyalties on the basis of religion, caste, community, region or language. These provisions can be invoked only when it can be proved that exploitation of such sentiments has given rise to "feelings of enmity or hatred between different classes of citizens on grounds of religion, race, caste, community or language". Also these provisions can only operate against individual candidates and not against political parties, which propagate such sentiments and play with the emotions of common man.

The recent judgement of Bombay High Court unseating a number of members of Maharashtra Legislative Assembly on grounds of exploiting the 'Hindutva' cult, amply underscore the need of a legislation to ban the use of such religious, communal or sectoral appeal for political and electoral gains.

Hence this Bill.

NEW DELHI;
November 18, 1991.

SHRAVAN KUMAR PATEL.

BILL NO. 202 OF 1991

A Bill further to amend the Payment of Gratuity Act, 1972.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

Short
title
and com-
mence-
ment.

1. (1) This Act may be called the Payment of Gratuity (Amendment) Act, 1991.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
section
2.

2. In section 2 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the principal Act), in clause (e),—

39 of 1972.

(i) the words “, not exceeding two thousand and five hundred rupees per mensem, or such higher amount as the Central Government may, having regard to the general level of wages, by notification, specify,” shall be omitted; and

(ii) the Explanation shall be omitted.

Amend-
ment of
section
4.

3. In section 4 of the principal Act,—

(i) sub-section (3) shall be omitted; and

(ii) sub-section (7) shall be omitted.

STATEMENT OF OBJECTS AND REASONS

The Payment of Gratuity Act, 1972, was passed to provide social security to the employees, particularly to such employees, who are not entitled for pensionary benefits. The Act which came into force on 1 September 1972 provided that gratuity shall be payable to those employees who receive wages upto rupees one thousand per month and that the amount of gratuity payable to such employees shall not exceed twenty months' wages. During the course of the last 19 years, the Act has been amended twice, firstly in July 1984 providing for payment of gratuity to those employees who draw wages upto rupees one thousand and six hundred per month and secondly in October 1987 providing for payment of gratuity to those employees who draw wages not exceeding rupees two thousand and five hundred per month and that the amount of gratuity payable to an employee shall not exceed rupees fifty thousand.

Though the amendments have been made twice, these have not been made in accordance with the increase in the consumer price index. The value of rupee has also been falling down continuously. Moreover, there is no social or economic reason as to why the monthly wages should be restricted to a particular amount. Similarly there is no social and economic reason for restricting the maximum amount payable as gratuity.

The Unions of employees enter into wage accords with their employers without knowing that they will lose the benefit of gratuity if their monthly wages exceed the highest prescribed limit.

Moreover, there is no nexus between the monthly wages earned by the employee and the compensation payable to him under the Industrial Disputes Act, 1947, the Factories Act, 1948, and the Workmen's Compensation Act, 1923. Provisions of two ceilings providing that the gratuity shall not be paid to those employees who draw wages more than rupees two thousand five hundred and that the total amount of gratuity should not exceed rupees fifty thousand in the Payment of Gratuity Act, 1972, are unreasonable, since there is no nexus between the ceilings imposed and the purpose sought to be achieved by the Payment of Gratuity Act, 1972, which was to compensate a worker for the loyal service he has rendered to an institution. These provisions are therefore, violative of articles 14, 16 and 21 of the Constitution of India.

It is, therefore, desirable that every employee should be entitled to receive the gratuity based on his wages.

Hence this Bill.

NEW DELHI;
November 13, 1991,

RAM NAIK

FINANCIAL MEMORANDUM

Clause 2 of the Bill seeks to do away with the provision of payment of gratuity only to those employees whose wages do not exceed two thousand and five hundred rupees per mensem and instead provides that gratuity should be paid to all employees. Clause 3 seeks to do away with the provision that amount of gratuity payable to an employee shall not exceed fifty thousand rupees. The Central Government will have to incur some expenditure in respect of employees working in the establishments, factories, mines, oilfields, etc., belonging to, or under the control of Central Government. The Bill, therefore, if enacted, will involve recurring expenditure of rupees ten crores per mensem from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

BILL NO. 195 OF 1991

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1991.

Short
title.

2. In article 30 of the Constitution,—

Amend-
ment of
article
30.

(a) in clause (1) for the words “of their choice”, the words “to conserve their language and culture” shall be substituted; and

(b) the following explanation shall be added at the end, namely:—

Explanation.—In this article, an educational institution shall be regarded as a minority institution if it is established by minorities whether based on language or religion for the benefit of minorities and for conserving their language and culture”.

STATEMENT OF OBJECTS AND REASONS

The Constitution of India protects the interests of minorities residing in the territory of India having a distinct language, script or culture in the matter of establishing and administering educational institutions to conserve their language and culture. Of late, in the name of minority institutions, there is a mushrooming growth of English medium educational institutions ranging from medical and engineering colleges to teachers' training institutions. These institutions are not amenable to the discipline in the matter of maintaining standards, appointment of staff, rules of admission etc. It is true that minorities have a right to establish and administer educational institutions to protect their language and preserve their culture. However, they have no right to establish English medium colleges of engineering and medicine which are of no benefit either to the minorities or to their cultural heritage. The State and Central Governments are running institutions for preserving language and culture of the minority communities and admission into such institutions is open to all irrespective of whether one belongs to majority or minority language or religious group provided they satisfy certain conditions laid down in the rules of admission to such institutions. With a view to bring the English medium educational institutions ranging from medical and engineering colleges to teachers' training institutions set up by the minorities within the purview of law of the land like other similar institutions, it is necessary to clarify that the protection under article 30 will be available to only those institutions which are set up by minorities to conserve their language and culture. Further, the Bill seeks to remove the divergence and confusion in the definition of educational institutions as defined in article 30 of the Constitution.

Hence this Bill.

NEW DELHI:
November 14, 1991.

CHOKKA RAO JUVVADI.

BILL NO. 200 OF 1991

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-second Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 1991.

Short
title.

2. In article 107 of the Constitution, in clause (2), the following proviso shall be added at the end, namely:—

Amend-
ment of
article
107.

“Provided that a Bill which affects any religion, religious place of worship, religious endowment or religious institution, shall be deemed to have been passed by each House only if it is passed by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting.”.

3. After article 111 of the Constitution, the following article shall be inserted, namely:—

Insertion
of new
article
111A.

“111A. (1) Notwithstanding anything in this Constitution, all laws in force in the territory of India, affecting any religion, religious place of worship, religious endowment or religious institution, which have come into force after the first day of July 1991, shall be void.”

Declara-
tion of
certain
laws as
void.

“(2) Any action taken under the provisions of any law which has been declared void under clause (1), shall not be called in question in any Court on any ground and such action shall be deemed to have been taken in good faith”.

4. In article 368 of the Constitution, in proviso to clause (2), for the word and figures “article 162”, the words and figures “proviso to clause (2) of article 107, article 111A, article 162” shall be substituted.

Amend-
ment of
article
368.

STATEMENT OF OBJECTS AND REASONS

Religion is something personal for every individual. The Constitution of India also recognises this right of the common man to profess or practise any religion of his choice. In the last few years it has been observed that the interference of State in the "religion" and "religious affairs" of citizens has increased manifold. This interference has created more problems than solving them. Many laws have been passed overlooking the provisions of the Constitution of India. For example, the Muslim Women (Protection of Rights on Divorce) Act, 1986, was passed even though the Directive Principles of State Policy give direction to the State to take steps for securing a common civil code for the citizens. The passing of the Places of Worship (Special Provisions) Act, 1991, is again a step in the wrong direction. The Act is not going to usher in communal harmony but on the other hand it has the seeds of communal disharmony. The law cannot change the belief of a person. If the people believe and the historical facts also confirm that a temple was situated at one place then by law the people cannot be made to believe that temple never existed there and instead something else was there. The interference of the State in the sensitive issue of religion or religious places should be to the minimum possible extent. Therefore, it is proposed that all laws affecting any religion, places of worship, etc., which have come into force after the first day of July 1991 should be declared void and in future such a law should be passed by Parliament in the same manner as a Constitution (Amendment) Bill is passed.

Hence this Bill.

NEW DELHI;
November 6, 1991.

LAXMINARAIN PANDEY

K. C. RASTOGI,
Secretary-General.